

Amend Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel Tax Law to provide appeals rights to taxpayers who have been assessed a 10 percent penalty for failure to make a prepayment in accordance with the law and that failure is due to negligence or intentional disregard for the law.

**Source: Sales and Use Tax Department
Special Taxes Department**

Existing Law

Under the Sales and Use Tax Law and the Motor Vehicle Fuel Tax Law, certain taxpayers whose monthly tax liabilities meet or exceed certain thresholds are required to make monthly prepayments of the liability. Under these laws, if a taxpayer fails to timely make the prepayment, or fails to make the full prepayment required, a six percent penalty applies to the amount not timely remitted. However, under Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel License Tax Law, that penalty may be increased to 10 percent if a person's failure to make a prepayment in accordance with the law is due to negligence or intentional disregard of the law. This 10 percent penalty is assessed in cases where a taxpayer has repeatedly been late in making his or her prepayments or repeatedly failed to make the full prepayment, and has received a warning from the Board that a 10 percent negligence penalty would apply if the taxpayer continues to fail in making prepayments in accordance with the law.

Unlike other penalties imposed in the law for late payments, the law does not provide a mechanism to provide relief of this negligence penalty when the Board finds that the person's failure to make a prepayment in accordance with the law is due to reasonable cause. Instead, the taxpayer must pay the penalty and file a claim for refund. If the claim for refund is denied, the taxpayer may then pursue his or her appeals rights.

This Proposal

This proposal would amend the laws so that the negligence penalty imposed under Sections 6478 and 7659.7 would be assessed as a deficiency determination. This would provide taxpayers with an opportunity to dispute the application of the discretionary negligence penalty through the filing of a petition for redetermination without having to pay the penalty and request a refund.

Section 6478 of the Revenue and Taxation Code is amended to read:

6478. (a) If a failure to make a prepayment as described in Section 6477 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 6484, 6485, 6511, 6514, and 6591.

(d) The 10 percent negligence penalty shall become due and payable and shall be ascertained and determined in the same manner as the deficiency determination under Article 2 (commencing with Section 6481). The provisions of Article 5 (commencing with Section 6561) shall be applicable with respect to the finality of the determination and the right to petition for redetermination.

Section 7659.7 of the Revenue and Taxation Code is amended to read:

7659.7. (a) If the failure to make a prepayment as described in Section 7659.6 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent, instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 7655, 7660, 7662, 7672, 7673, and 7726.

(d) The 10 percent negligence penalty shall become due and payable and shall be ascertained and determined in the same manner as the deficiency determination under Article 4 (commencing with Section 7670). The provisions of Article 6 (commencing with Section 7710) shall be applicable with respect to the finality of the determination and the right of the supplier to petition for redetermination.